



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2624-99

17 March 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 7 August 1978 for three years. The record reflects that you served without incident until 3 January 1979 when you were reported in an unauthorized absence (UA) status. You remained absent until you were apprehended by civil authorities on 5 January 1979 for failure to pay a just debt. You were fined and returned to your command on 8 January 1979.

On 21 January 1979 you were apprehended by civil authorities on an arrest warrant for burglary. You remained in civil custody until 30 January 1979 when you were returned your command with a court date set for 15 February 1979. However, on that date, charges were dropped due to insufficient evidence.

On 17 February 1979 you were reported UA again and you did not surrender to military authorities until 12 May 1979. Three days later, you were admitted to a naval hospital for multiple

substance abuse and detoxification. However, you were released to full duty on 18 May 1979.

On 14 June 1979 you submitted a request for discharge under other than honorable conditions for the good of the service to escape trial by court-martial for the periods of UA from 3-5 January and 17 February to 12 May 1979, absence from your appointed place of duty, drinking alcoholic beverages in the barracks, and communicating a threat. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. In his endorsement recommending approval of your request, the commanding officer noted that in an interview on 22 June 1979 you related deep emotional problems, coupled with alcohol abuse and experimentation with drugs. He also noted that you had undergone psychiatric evaluations during your second period of UA and the impression of a team of civilian doctors was that you had a schizoid personality due to a history of repeated child abuse and rape. You admitted to the CO that your need for alcohol had increased since entering the Marine Corps and your involvement with drugs would probably continue. A staff judge advocate reviewed your request and found it to be sufficient in law and fact. On 6 July 1979, the discharge authority directed discharge under other than honorable conditions. You were so discharged on 18 July 1979.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, deprived family background, and the fact that it has been more than 20 years since you were discharged. The Board noted your statements in support of your application that you are a recovering alcoholic, have been under psychiatric care for over 15 years, and are currently homeless. The Board concluded that the foregoing factors and statement were insufficient to warrant recharacterization of your discharge given the fact that you accepted discharge rather than face trial by court-martial for two periods of UA totalling more than three months. The Board also noted you had drug and alcohol abuse problems. Although they may be considered mitigating, they do not excuse misconduct. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director